Filed 2/28/19 In re A.M. CA1/4

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re A.M., a Person Coming Under the Juvenile Court Law.	
NAPA COUNTY HEALTH & HUMAN SERVICES AGENCY, Plaintiff and Respondent, v. G.F., Defendant and Appellant.	A155114 (Napa County Super. Ct. No. 17JD000023)

I. INTRODUCTION

In this dependency proceeding, the juvenile court detained five-week-old A.M., declared him to be a dependent of the court, and placed him with out-of-home foster caregivers, after his parents, father G.B. (Father) and mother G.F. (Mother), brought him to the hospital suffering from an array of grievous injuries that left him profoundly disabled for life. Father and Mother offered no explanation for how this infant came to be in such a tragic state. The attending physicians opined beyond any doubt that his injuries could not have been caused by accident.

At disposition, the juvenile court bypassed reunification services under Welfare and Institutions Code section 361.5, subdivision (b)(5),[1] set a section 366.26 hearing, and

[1] Undesignated statutory references are to the Welfare and Institutions Code.

granted Father and Mother limited visitation rights. Citing changed circumstances, Mother subsequently filed two section 388 petitions asking the court to reconsider its prior denial of services, and, among other things, to liberalize her visitation rights and to grant A.M.'s grandparents visitation rights. The court summarily denied these petitions and denied Mother's request for an evidentiary hearing. Mother now appeals. We affirm.

II. BACKGROUND[2]

A. Initiation of Dependency Proceedings

On March 22, 2017, the Napa County Health and Human Services Agency (Agency) filed a petition alleging that five-week-old A.M. came within section 300, subdivisions (a), (b)(1), (e), and (i). The Agency alleged that A.M. had multiple injuries that were indicative of being violently assaulted by at least one caregiver and that A.M.'s parents should have reasonably known of the risk to him due to the nature and repeated infliction of the injuries while in their care.

According to the Agency, A.M. had at least 13 fractured ribs, two fractured clavicles and severe injuries to his brain, including bleeding in, on or around his brain, as well as swelling and retinal bleeding in both eyes and possible lacerations to his brain, which were causing uncontrollable seizures. The Agency alleged that A.M.s injuries were at different stages of healing, were unlikely to have been caused at the time of birth, life threatening and likely to have permanent impact on his ability to function.

The Agency also alleged that the parents had failed to care for the child adequately because he was under one percentile for his height and weight based on his age; Father had demonstrated that he did not care for the child safely by holding the child without proper support; Mother was aware of and failed to protect A.M. from Father's unsafe parenting; and Mother's codependent relationship with Father diminished her ability to

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[2] Much of the factual background is taken from the record in *G.F. v. Superior Court* (Mar. 15, 2018, A152551) [nonpub. opn.] (proceedings on writ petition), of which we take judicial notice. (Evid. Code, §§ 452, subd. (d), 459.)

safely parent the child.

The Agency initiated these proceedings following a referral by Children's Hospital in Oakland and the ensuing investigation, which found as follows. The parents reported that they resided in the home of A.F. and G.G., Mother's mother and stepfather. The only people to care for A.M. during his five weeks of life were the parents and the six grandparents. The parents stated that during Saturday morning on March 18, 2017, A.M. was lethargic, not taking his mother's breast, which was unusual, and running a fever of 100.6 degrees. The parents took A.M. to St. Helena Hospital where he was found to have an elevated white blood cell count, which can be indicative of an infection. Because there was no pediatrician at that hospital, he was transferred, by ambulance, to Children's Hospital in Oakland.

At Children's Hospital, the medical staff attempted to do a spinal tap on A.M. and found hemorrhaging around his brain. Further tests found diffuse retinal hemorrhaging and an x-ray found broken ribs. A.M. was placed in intensive care, where his condition was "deteriorating." On March 20, 2017, A.M.'s respiratory rate dropped, requiring medical staff to intubate him and put him on a ventilator to allow him to breathe. By March 21, 2017, he was in critical condition and having uncontrollable seizures.

On March 21, 2017, after A.M. had undergone additional testing and scans, the social worker met with Dr. Rachel Gilgoff, a child abuse expert at the Center for Child Protection at Children's Hospital, who described A.M.'s injuries. Dr. Gilgoff stated that A.M. had "a pretty devastating brain injury" due to direct trauma to the brain and brain swelling, which led to a lack of blood flow to the brain." She also stated that A.M. had retinal hemorrhages in both of his eyes and 13 to 15 fractures on his ribcage. She stated that since there were older and newer fractures, it indicated they were not related to A.M.'s birth. Dr. Gilgoff stated that it is "exceedingly rare" to have rib fractures from birth and there are only 13 documented cases of this ever happening. Given the constellation of injuries, her clinical opinion was that A.M. had been violently assaulted on one or more occasions. She stated that the "brain injury appears newer and some of the ribs are in varying healing phases, indicating that multiple assaults are a high

possibility."

Dr. Gilgoff also noted that A.M. was extremely skinny. He was underweight for his age, his height and weight measured at under the first percentile of babies his age. His head, however, was in the 85th percentile, demonstrating how his swollen brain made his head disproportionate to his body. Dr. Gilgoff stated that the parents described A.M. as acting perfectly fine and being a calm baby. They continued to state that they do not know who would have done this and when it could have occurred. She also observed that Mother was "somewhat irritated" with Father and they disagreed on small facts when speaking to her, such as what the baby was wearing and what the baby's temperature was.

Both parents denied any knowledge of how A.M. could have been injured.

B. Detention Hearing

The court held the detention hearing on March 22 and 23, 2017. Both parents were present. The court appointed counsel for the parents and the child and continued the hearing for another day when Father's counsel could be present. The parents, through counsel, submitted on the Agency's detention report, which called for detention of the child, who remained hospitalized. The court found there was prima facie evidence that the child came within section 300 and ordered him detained.

C. Jurisdiction and Dispositional Report

On July 25, 2017, the Agency filed its jurisdiction and dispositional report. Attached to the report were the records reviewed by and relied upon by the Agency's assigned social worker, Jana Delgado-Jimenez, including police and substance abuse treatment and testing reports for the father and medical records related to the child. Ms. Delgado-Jimenez summarized Father's criminal history in the report.

According to Ms. Delgado-Jimenez's report, A.M. had been seen at his pediatrician's office at Harvest Pediatrics on February 13, 2017, for his newborn visit. The record states that A.M. was "calm and alert and vigorous." No abnormalities or concerns were noted other than his being red in color. A.M.'s spine, ribs, and pelvis were examined and found normal. In his neurological exam, he had normal infant reflexes and

"normal tone, level of alertness and normal responsiveness to exam." At follow-up visits on February 16, 24, and 28, 2017, no spinal, rib, pelvis or neurological concerns were noted. The notes on the visit on February 24, 2017, state that the parents report "excessive irritability; cries a lot."

On March 12, 2017, Mother called Harvest Pediatrics with concerns about bruising. The doctor observed "newly erupting purple spots on the baby, one on the eye, one on the stomach and one over the nipple. To mom they seem to be tender, baby fussy but otherwise ok and no fever, eating fine though decreased frequency of stooling. Mom described the lesions as looking purple, like abrasions or 'burns that are healing' and is certain the baby had no trauma, has been with her all day." The doctor told Mother that he could not be sure what the marks could be, and Mother decided to take A.M. to the emergency room.

Also on March 12, 2017, the parents brought A.M. to the Queen of the Valley Hospital emergency room in Napa, with concerns about marks on his neck and chest. He had "small areas of purple bruise like rash to abdomen, with a ring pattern around the left nipple." The records note that "[t]he child is eating well with no fever and no distress." A.M.'s laboratory results were normal, and the parents were instructed to follow up with A.M.'s pediatrician.

On March 13, 2017, the parents brought A.M. again to Harvest Pediatrics for his one-month-old visit. The doctor again noted marks on his mid-abdomen and a semicircular bruise around this left nipple. Mother told the doctor that the bruise went all the way around the nipple the prior day. The doctor also noted an abnormality in that both of his clavicles were raised in the middle as though they were bowed upward. The doctor noted no crepitus, the grating sound produced by friction between bone and cartilage or the fractured parts of a bone, and A.M.'s arm movements appeared normal. Under the plan, the notes state, "Consider an x-ray to assess his clavicles."

On March 18th, the parents took A.M. to St. Helena Hospital, as noted above, which led to the transfer to Children's Hospital. In her report, Ms. Delgado-Jimenez summarized the two meetings she and the parents had with Dr. James Crawford-

Jakubiak, the Medical Director of the Center of Child Protection at Children's Hospital and A.M.'s main physician while he was hospitalized from March 18 to April 10, 2017. Dr. Crawford-Jakubiak explained to the parents that he was absolutely certain the brain injury could not have occurred at birth. He reviewed the x-rays and explained that the fractures were of different ages and that they could not have occurred at birth.[3] The doctor pointed out that in his medical birth records there is no mention of any deformity to his clavicles or chest area. In addition, he stated that the clicking sounds only occur when the fracture is new enough that the bone has not started healing itself—about a week after the fracture. He stated that the parents would not have heard any clicking sounds in March if the fractures occurred at birth. Finally, he concluded that whoever caused the injuries would have been aware that they had severely injured the baby.

Ms. Delgado-Jimenez, described several video recordings of Father holding A.M. without supporting his neck and head, pretending to drop him, and scrunching up his legs to curl the baby into a ball. She noted that Mother continued to film Father without intervening to make him be less rough with their newborn baby. There were also several recordings of the baby crying and trembling without either parent attempting to comfort him. There were also photos of A.M. dated March 17, 2017, where his eyes appeared distorted. Finally, Ms. Delgado-Jimenez described a series of photographs of a naked A.M. propped up against a St. Patrick's Day pillow with coins around his genital area.

Ms. Delgado-Jimenez also reported on her interviews with both parents, as well as the grandparents. She noted that the parents gave conflicting accounts of how they cared for A.M. during the period leading up to his hospitalization. Further, the parents gave conflicting stories about the number of times Father had cheated on Mother. Ms. Delgado-Jimenez wrote that despite meeting with the doctor twice and having all their questions answered by him, both parents continued to believe that no one hurt A.M. "Their account of the weeks leading up to [A.M.'s] hospitalization includes hearing

[3] Dr. Crawford-Jakubiak said it was unlikely that the fractures to his clavicle bones occurred at birth due to the constellation of his injuries, but he could not rule out that the fracture in the left collar bone may have occurred at birth.

crackling sounds in his chest area, patterned and non-patterned bruising, a fussy and irritable baby and multiple family members caring for their son at different times—yet no one managed to put the pieces together to figure out that someone was hurting the baby. The parents maintain that they do not believe that someone close to them (or each other) could have hurt [A.M.] (despite experts and medical information telling them otherwise)."

D. Contested Jurisdiction and Disposition Hearing

At a contested jurisdictional and dispositional hearing held over 10 days in August and September 2017, Dr. Crawford-Jakubiak testified as an expert in pediatric medicine and the medical evaluation of child abuse and neglect. Dr. Crawford-Jakubiak testified that he had reviewed all of the records created during A.M.'s hospitalization at Children's Hospital, A.M.'s birth records, A.M.'s records from his pediatrician, and the emergency room records from his prior visit to St. Helena Hospital. He also testified that he had consulted on the case with the other physicians involved with A.M.'s care, including treating physicians in the emergency room, intensive care physicians, trauma surgeons, neurosurgeons, radiologists, neurologists, hematologists, and endocrinologists.

Dr. Crawford-Jakubiak testified that the nature of what happened to A.M. was "extreme. It caused, again, at least 15 fractures, injuries to his eyes, injury to his brain, lacerations of his brain, and bruising to his torso which resulted in a permanent injury to his brain. I would characterize the degree of what happened to him, the severity of the injuries as among the most severe that I've encountered in the 20 years I've been at Children's Hospital." Dr. Crawford-Jakubiak explained that A.M. suffered a traumatic brain injury that caused lacerations, or large tears, to his frontal lobe, bruising in different parts of his brain, and bleeding around his brain and in the ventricles (fluid-filled cavities) inside of his brain. In addition to this primary brain injury, A.M. also suffered hypoxia—a lack of oxygen—to his brain.

Dr. Crawford-Jakubiak testified that he believed "with certainty" that the brain injury was caused by "nonaccidental trauma" and that was the unified consensus among the physicians he conferred with at the hospital. The doctor also testified that the CAT

scan and MRI images of A.M.'s brain taken upon his hospitalization at Children's Hospital demonstrated that the injury to his brain occurred in the "relatively recent past," with the "highest probability window" in the 24 to 48 hours before the images were taken. He added that "[t]here's a zero percent chance" the injury could have occurred a month or longer before March 28, 2017.

He later testified that because A.M. had suffered no skull fractures or bad soft tissue injury to the back of the head, in his opinion, there was "one or more episodes where his head was either slammed against or thrown against a relatively soft surface as opposed to a hard surface." He also stated that whoever caused the brain injury would have been aware at the time that a severe injury had occurred. He stated that "I have no question in my mind that they would have recognized that the event that happened was some type of extreme event, very traumatic event that rendered the child at worst unconscious initially or altered initially."

The doctor testified about A.M.'s prognosis, stating, "Unfortunately, his brain injury is extremely severe. The parts of [his brain] that used to do different things are simply gone. So his growth and development will be very significantly and permanently affected." He added that A.M. "will, every day for the rest of his life, need somebody physically with him to make sure he's fed, to make sure he's clean, to make sure that he's healthy. He will, unfortunately, never grow and develop as he had previously been expected to before the injury. He will need support at all aspects of his life."

Dr. Crawford-Jakubiak also testified about the additional injuries A.M. suffered. Dr. Crawford-Jakubiak reviewed the various x-rays and CAT scans taken of the fractures to A.M.'s ribs and clavicles. Dr. Crawford-Jakubiak testified that based on his review of the medical images and A.M.'s clinical history at least two and possibly more incidents of trauma occurred to result in the fractured bones. He stated that there were over a dozen fractures and "[s]ome of these fractures again are clearly significantly younger than others. So for some of the fractures, some of the rib fractures . . . there's no way that some of them are birth related. With regard to the majority of the rib fractures, the degree of healing is most consistent with an age of approximately three or four weeks."

Dr. Crawford-Jakubiak also testified that in his opinion whoever caused the rib fractures caused them nonaccidentally on at least two occasions. He also stated that "the person absolutely knew they hurt the baby. Whether they knew they necessarily caused fractures, they may or may not have. But there's no question that whoever was there knows that the baby was injured."

On September 21 and 22, 2017, Mother testified. She testified that her religion was "one hundred percent important" to her. She also testified that she was engaged in individual and couples counseling, which she had begun at the end of March 2017. Mother testified that she and Father were no longer in a romantic relationship and that she had terminated the relationship about two and a half months earlier. She stated that she terminated the relationship because "[h]e was seeking emotional support from other women . . . ." She testified that she had not informed the court of the termination of her relationship with Father previously because "[i]t never came up." She stated that she and Father had established separate households based on advice from counsel. When they separated homes, she and Father were still partners.

Ms. Delgado-Jimenez testified why she did not believe there were existing reunification services that would keep A.M. safe. She stated that every time she interviewed Mother, she asked her what she thought caused the injuries to her son and how can we prevent them from recurring. She stated that after Mother responded that it was birth-related and no one in the family hurt A.M., the social worker arranged the meeting with Dr. Crawford-Jakubiak. After the meeting, despite the "hard evidence in front of us," Mother continued to deny that the trauma was nonaccidental. Since Mother refused to acknowledge the evidence that the trauma was nonaccidental, Ms. Delgado-Jimenez testified, no services could be provided to make A.M. safe. She stated, "I don't know how to come in and give recommendations for solutions if I don't know what the family understands the problem to be."

Ms. Delgado-Jimenez testified that there was nothing the parents could do to convince her that they could secure A.M.'s safety in the near future, because "this has been an ongoing conversation and dependency case for six months now and I have failed

to see a change of behaviors of the parents that would indicate that they're anywhere near even starting the process of changing their behaviors to ensure the safety for their son."

After testimony and argument, the court found the allegations of the petition to be true and found that A.M. came within section 300 subdivisions (a), (b)(1), (e), and (i). The court declared A.M. to be a dependent of the court, placed him in foster care, ordered that the parents receive no reunification services pursuant to section 361.5, subdivisions (b)(5) and (b)(6), and ordered the matter continued for a section 366.26 hearing. The court also ordered that the parents receive visitation of one hour per month.

E. The April and May Section 388 Petitions and Request for an Evidentiary Hearing

With the section 366.26 hearing pending, several section 388 petitions were filed by Mother, Father, and a number of relatives. Only one of these various pleadings, a petition filed by Mother on April 15, 2018, is at issue here. In it, Mother requested that the court change its previous order denying her reunification services, that it increase her visitation rights, that it permit her to attend A.M.'s medical appointments, and that it reinstate her as the educational rights holder for A.M. In support of the petition, Mother alleged that circumstances had changed because she had completed a 10-hour advanced parenting class on October 26, 2017, had completed CPR and pediatric first aid classes, attended church, engaged in counseling, had moved out of her family's house and severed her relationship with Father, and secured permanent full-time employment. At an August 16, 2018 hearing, the court summarily denied Mother's petition and ruled she failed to present a prima facie case entitling her to an evidentiary hearing. Mother filed a timely notice of appeal.[4]

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[4] Mother's notice of appeal also purports to appeal from the summary denial on August 16, 2018 of a second section 388 petition by her. In this second petition, filed May 17, 2018, Mother requested that the court grant visitation rights to A.M.'s grandparents. In support of it, Mother pointed out that she is no longer in a relationship with Father, that grandparents have requested visitation, that A.M. "has always been around the immediate family since birth," and that A.M. "is familiar with" grandparents.

III. ANALYSIS

A. Standard of Review

We review a juvenile court's decision to deny a section 388 petition without a hearing for abuse of discretion. (*In re G.B.* (2014) 227 Cal.App.4th 1147, 1158.) "[W]hen a court has made a custody determination in a dependency proceeding, ' "a reviewing court will not disturb that decision unless the trial court has exceeded the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination [citations]." ' " (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318.) " ' "The appropriate test for abuse of discretion is whether the trial court exceeded the bounds of reason. When two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court." ' " (*Id*. at pp. 318–319.)

B. The Petition Failed to Make a Prima Facie Showing Sufficient to Justify an Evidentiary Hearing.

Generally, a parent may petition the juvenile court to change or set aside a prior order "upon grounds of change of circumstance or new evidence." (§ 388, subd. (a)(1).) The juvenile court must order a hearing when it appears the best interests of the child may be promoted by the new order. (§ 388, subd. (d).) In order to trigger an evidentiary hearing on the supplemental petition, the petitioner must make a prima facie showing that (1) new evidence or changed circumstances exist and (2) the proposed change would

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Because Mother's opening brief on this appeal fails to present any separate argument directed to her May 17, 2018 section 388 petition, all such arguments are waived and we will treat that aspect of the appeal as having been abandoned.

We note, however, that two grandparents (it is not clear in the May 17, 2018 petition who they are), appear to have filed their own section 388 petitions seeking the same relief. The other petitions were apparently filed by A.F. and G.G., the maternal grandparents, who, on June 25, 2018, filed a petition to modify prior court orders requesting "immediate" twice weekly visits with A.M. and immediate placement of A.M. The court denied the petition of A.F. and G.G. on September 17, 2018, and an appeal from that decision is pending. (*Napa County Health and Human Services v. A.F. et al.* (A155752, app. pending).)

promote the best interests of the child. (*In re Zachary G.* (1999) 77 Cal.App.4th 799, 806.) "A prima facie case is made if the allegations demonstrate that these two elements are supported by probable cause. It is not made, however, if the allegations would fail to sustain a favorable decision even if they were found to be true at a hearing." (*In re G.B.*, *supra*, 227 Cal.App.4th at p. 1157.) "In determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case." (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.)

When the juvenile court has denied parents reunification services due to severe physical abuse, additional conditions apply to modify that order. As stated in *In re G.B.*, "Once severe abuse has been found, a court is *prohibited* from granting reunification services 'unless it finds that, based on competent testimony, those services are likely to prevent reabuse or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent.' Stated another way, in the 'comparatively extreme situation[]' when a child is the victim of severe abuse, the legislative presumption is that services are not to be provided to the parent.

"When this presumption applies, the evidentiary burden is heightened at any hearing to consider a section 388 petition requesting reunification services. In such a case, a juvenile court may modify an order denying reunification services only if there is clear and convincing evidence that the services would be in the child's best interests, and only if it makes the same findings that would have been required to offer services at the disposition hearing instead of bypassing services." (*In re G.B.*, *supra,* 227 Cal.App.4th at pp. 1157–1158, citations omitted.)

In sum, a juvenile court may only grant an evidentiary hearing on a petition to order reunification services or increase visitation, when the parent was previously denied reunification services for severe abuse, if the parent makes a prima facie showing that: (1) new evidence or a change of circumstances exists; (2) based on competent testimony, services are likely to prevent reabuse; and (3) the best interests of the child may be promoted by the change in court order. (*In re G.B.*, *supra,* 227 Cal.App.4th at pp. 1157–1158.) Mother failed to make the requisite showing in her petition.

1. The Petition Failed to Allege a Change in Circumstances

The juvenile court recognized that the situation here is very similar to the facts presented in *In re G.B., supra,* 227 Cal.App.4th 1147, where this court affirmed the denial of an evidentiary hearing on a mother's first supplemental section 388 petition requesting that the court revisit its order denying her reunification services with her son and a severely abused infant daughter. After entry of an order denying reunification services at the jurisdictional hearing, the mother engaged in therapy (both individual and couple's counseling), took a parenting class, and attended domestic violence counseling and a domestic violence support group. (*Id*. at p. 1152.) In her petition, the mother also alleged that she had separated from the father, who was suspected of physically abusing their daughter, and had undergone a court-ordered psychological evaluation. (*Id.* at p. 1160.)

Even accepting as true the mother's claims of self-improvement, the court held the petition failed to establish a prima facie case in support of granting her services. It noted that the mother's willingness to engage in services was already known at the time the court denied her reunification services, so for her to follow through and actually engage in services was not sufficient to constitute evidence of changed circumstances. The *In re G.B.* court also found that the additional allegations in the petition—that she had separated from the father and had a psychological evaluation—were insufficient to show a likelihood of preventing reabuse or that services were in the children's best interests when the mother continued to deny parental abuse of the child. (*Id.* at p. 1160; see also *In re A.M.* (2013) 217 Cal.App.4th 1067, 1070–1076 [evidence that mother separated from father, the suspected abuser, had a restraining order protecting her from him, and had engaged in therapeutic services was insufficient to demonstrate, by clear and convincing evidence, that services would prevent reabuse or that reunification would be in the children's best interests].)

The same is true here. Mother's petition failed to make an adequate showing that as of August 2018 circumstances had changed. She made some laudable efforts,

but the claim of changed circumstances is unavailing where all she did was complete a 10-hour advanced parenting class on October 26, 2017, complete CPR training and pediatric first aid classes, attend church, engage in counseling, move out of her family's house and sever her relationship with Father, secure permanent full-time employment, and read some inspirational and other books on medical conditions. None of these circumstances is new, at least not in any material sense.

In a previous section 388 petition filed on November 6, 2017, also denied without evidentiary hearing, Mother had alleged that she had completed a parenting class and completed CPR and pediatric first aid classes. At the jurisdiction and dispositional hearings, she had testified that she was religious, was engaged in counseling, and had separated from Father about three months after A.M. was detained. One of the circumstances she alleged had changed in her latest petition called for an evidentiary hearing. To the extent that having engaged in counseling for a longer period of time and reading books or finding new employment, could be construed as new evidence, it is not substantial enough to demonstrate a change sufficient to warrant an evidentiary hearing. (*In re Ernesto R.* (2014) 230 Cal.App.4th 219, 223 ["To support a section 388 petition, the change in circumstances must be substantial."].)

2. The Petition Failed to Allege that Services are Likely to Prevent Reabuse or That Failure to Try Reunification Will be Detrimental to the Child

Mother argues, incorrectly, that to make out a prima facie case entitling her to an evidentiary hearing all she needed to allege was that additional services *might* prevent reabuse in the future. That is not an accurate statement of the governing standard. Rather, the court must find, based on competent testimony, and the petitioning parent must plead, that those services are *likely* to prevent reabuse or that failure to try reunification will be detrimental to the child *because the child is closely and positively attached to that parent.* In addition, the parent must plead that the services would be in the child's best interests, which must ultimately be established

by clear and convincing evidence if the parent is granted a hearing. (*In re G.B., supra,* 227 Cal.App.4th at pp. 1157–1158.) Mother's pleading failed to meet these standards.

Meeting even the pleading standard is particularly challenging where, as here, a parent remains in denial as to his or her responsibility for a child's severe injuries. In *In re A.M., supra,* 217 Cal.App.4th 1067, for example, the mother, who had been denied reunification services initially due to the child's severe physical abuse, continued to deny knowing how the child was injured and that the father could have injured the child. Under those circumstances, the Court of Appeal found, "there is no reason to believe further services will prevent her from inflicting or ignoring the infliction of similar injuries in the future." (*Id.* at p. 1078.) The same holds true here. At the jurisdictional and dispositional hearing, the social worker had testified that without acknowledging the evidence that the trauma was nonaccidental, no services could be provided to the parents to ensure A.M.'s safety. As Ms. Delgado-Jimenez stated, "I don't know how to come in and give recommendations for solutions if I don't know what the family understands the problem to be."

In her April 2018 petition, Mother continued to deny that A.M.'s injuries were caused by non-accidental trauma, despite multiple meetings with and listening to the extensive testimony of Dr. Crawford-Jakubiak and the other physicians involved with A.M.'s care. The social worker observed that Mother's petition did not show any changes into "her insight into the gravity of [A.M.'s] medical conditions nor does she acknowledge that [A.M.'s] injuries were caused by non-accidental assaults, which caused [A.M.] to be near death." In her opinion, the only way to protect A.M. was for him to remain out of the parents' home. The juvenile court properly found that Mother's petition failed to demonstrate prima facie evidence that she understood the cause and nature of A.M.'s injuries. Therefore, she failed to demonstrate that reunification services would likely prevent reabuse.

3. The Petition Failed to Allege That the Proposed Changes Are in A.M.'s Best Interest.

Finally, nothing in the petition alleged that awarding Mother reunification services or increased visitation was in A.M.'s best interest. "After the termination of reunification services, the parents' interest in the care, custody and companionship of the child are no longer paramount. Rather, at this point " 'the focus shifts to the needs of the child for permanency and stability,' (*In re Marilyn H.* (1993) 5 Cal.4th 295, 309), and in fact, there is a rebuttable presumption that continued foster care is in the best interest of the child." (*In re Stephanie M.*, *supra,* 7 Cal.4th at p. 317.)

Here, the petition failed to demonstrate that ordering reunification services, increased visitation, or any of the other requested changes are in A.M.'s best interest. In fact, Mother alleged only that there would be "no detriment to my son to be awarded more time with me, or by allowing [me] to attempt reunification services. He is simply not able to be harmed in any manner, because of his severe injuries." Alleging that there would be no detriment does not make a prima facie showing that the proposed order would be in A.M.'s best interests. A failure to demonstrate that the proposed order could prevent reabuse, by itself, constitutes a basis for finding the proposed order is not in the child's best interest. (*In re G.B.*, *supra,* 227 Cal.App.4th 1147, 1160; *In re A.M.*, *supra,* 217 Cal.App.4th 1067, 1077–1078.)

4. The Precedent Mother Relies Upon is Inapposite.

To support her claimed entitlement to an evidentiary hearing, Mother relies on three cases, none of which is applicable. None of them was a case, as this one is, where a juvenile court denied reunification services for severe abuse. In *In re Jeremy W.* (1992) 3 Cal.App.4th 1407, for example, the Court of Appeal reversed the juvenile court's denial of the mother's petition to modify without an evidentiary hearing. The mother, who had met most of the conditions for reunification prior to the termination of services, had attached declarations demonstrating she had stable housing (the only remaining outstanding condition), a recommendation from her treating therapist that

she was prepared to assume custody of her child, and evidence that the child wished to live with his mother. (*Id.* at pp. 1413–1416.) Mother pleaded no such changed circumstances here.

In *In re Hashem H*. (1996) 45 Cal.App.4th 1791, the Court of Appeal held that the trial court erred by denying the mother a hearing on her petition for modification. After months of therapy, the mother filed a section 388 petition requesting custody. Attached to her petition was a letter from her therapist describing the mother's progress in therapy and conjoint therapy with Hashem and her ability to assume custody of Hashem. (*Id.* at p. 1796.) The Court of Appeal found the mother made "an adequate showing that at a hearing she could demonstrate that she had overcome her problems through conscientious and successful individual and conjoint counseling over a lengthy period of time; that she maintained a consistent relationship with her son, including weekly visitation . . . ." (*Id.* at p. 1800.) Mother's petition here contained no expert recommendation that she be provided with reunification services. And in *In re Aljamie D.* (2000) 84 Cal.App.4th 424, the court reversed the juvenile court's denial of the mother's petition for modification without an evidentiary hearing, finding that the mother had made a prima facie case for a change of circumstances. The mother, whose children were removed due to a substance abuse problem, had alleged she had fully complied with the case plan and had attached completion certificates for parenting classes, a domestic violence program, a residential substance abuse treatment program, a job readiness workshop, a perinatal health education program, a "behavior change and skills building prevention" program; had visited regularly; and the children wished to return to her. (*Id.* at p. 428.) The court found, and the Agency did not dispute, that the mother had adequately shown "probable cause" that her circumstances had changed. (*Id.* at p. 432.) That is not what was presented on this record.

IV. DISPOSITION

Affirmed.

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STREETER, J.

WE CONCUR:

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POLLAK, P. J.

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BROWN, J.

A155114/*In re A.M.*